

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW
ETHICS ADJUDICATORY BOARD**

BOARD OF ETHICS

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* **DOCKET NO. 2020-5918-ETHICS-B**

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IN THE MATTER OF

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ROGER Z. TONEY

* **AGENCY TRACKING NO. 5120-062**

DECISION AND ORDER

Roger Z. Toney knowingly failed to file his 10-G campaign finance disclosure report by the eleventh day after it was due in connection with his candidacy for the office of Mayor of the Town of Ball. The Board of Ethics, acting in its capacity as the Supervisory Committee on Campaign Finance Disclosure, is authorized to impose upon Roger Z. Toney an additional civil penalty of up to \$10,000.00, as allowed by La. R.S. 18:1505.4(A)(4)(b).

APPEARANCES

An adjudicatory hearing was conducted December 17, 2020, in Baton Rouge, Louisiana, before Panel B of the Ethics Adjudicatory Board (EAB).¹ Charles Reeves appeared as counsel on behalf of the Board of Ethics (BOE). Although duly noticed, Roger Z. Toney (Respondent) did not appear for the hearing.²

STATEMENT OF THE CASE

The BOE requested that the EAB conduct an adjudicatory hearing to determine whether, pursuant to La. R.S. 18:1505.4(A)(4)(b), Respondent was more than eleven days late filing his 10-

¹ Panel B of the EAB consists of Administrative Law Judges Gregory McDonald (presiding), Anthony Russo, and Esther Redmann.

² The hearing notice was mailed on November 10, 2020, by the Administrative Hearings Clerk for the Division of Administrative Law to Roger Z. Toney at: 489 Burma Road, Ball, Louisiana, 71405-9426.

G campaign finance disclosure report for the November 16, 2019, general election for the office of Mayor of the Town of Ball.

At the hearing, BOE offered its exhibits, numbered BOE-1 through BOE-12, which were admitted into evidence. BOE requested the EAB make a determination of whether Respondent was more than eleven days late in filing his 10-G campaign finance disclosure report, which would subject him to additional civil penalties under La. R.S. 18:1505.4(A)(4). The record was closed and the matter was submitted for decision.

This adjudication is conducted in accordance with the Campaign Finance Disclosure Act (CFDA), La. R.S. 18:1481, *et seq.*, the Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*, and the Administrative Procedure Act, La. R.S. 49:950, *et seq.*

FINDINGS OF FACT

Respondent was a candidate for the office of Mayor of the Town of Ball in a primary election held October 12, 2019.³ The office of Mayor of the Town of Ball is an “any other” level public office.⁴ Respondent was defeated in the primary election.⁵ A runoff of the top two candidates was held in the general election on November 16, 2019.⁶ Respondent was required to file a campaign finance disclosure report ten days prior to the general election (also known as the 10-G report), due on November 6, 2019.⁷

³ See BOE-2; BOE-3, page 4. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he was a candidate for the office of Mayor of the Town of Ball. BOE-9, page 4; BOE-10; BOE-12.

⁴ La. R.S. 18:1483(7) defines a “district office” and La. R.S. 18:1483(11) defines a “major office.” La. R.S. 18:1484(2) defines a candidate for “any other” public office as a candidate for a public office, other than a candidate for a district office or a major office, who makes expenditures in excess of two thousand five hundred dollars or receives a contribution in excess of two hundred dollars in the aggregate during the aggregating period. For the purposes of this provision, a contribution by a candidate for his own campaign for a public office other than a major office or district office shall not be considered in determining whether a candidate has received a contribution in excess of two hundred dollars in the aggregate. La. R.S. 18:1484(2)(b).

⁵ BOE-3, p. 4 of 5.

⁶ BOE-4.

⁷ *Id.*, p. 1. Respondent timely filed the required 30-P report, disclosing a third party contribution of \$500.00 for the period from September 23, 2019, through October 27, 2019.

The BOE is the Supervisory Committee on Campaign Finance Disclosure under the CFDA.⁸ Election candidates, when qualifying at their respective clerks of court, are provided with BOE's Schedule of Reporting and Filing Dates for Candidates (Schedule).⁹ The Schedule informed Respondent that the 10-G report was due November 6, 2019.¹⁰ Upon qualifying to run for office, Respondent also acknowledged that he was subject to the provisions of the CFDA.¹¹

Respondent did not file the required 10-G report by the due date, November 6, 2019.¹² The BOE issued a Late Fee Assessment Order, signed February 28, 2020, assessing a civil penalty of \$1,000.00 for this violation.¹³ In the letter accompanying the Late Fee Assessment Order, the BOE notified Respondent that he could be subject to an additional civil penalty not to exceed \$10,000.00, pursuant to La. R.S. 18:1505.4(A)(4). The 10-G report had not been filed as of December 4, 2020.¹⁴

Respondent failed to appear for the hearing, despite notice of the hearing being sent to his last known address.

CONCLUSIONS OF LAW

The BOE proved that Respondent knowingly failed to file a 10-G campaign finance disclosure report ten days prior to the general election, due on November 6, 2019, and the BOE may impose upon Respondent an additional civil penalty not to exceed \$10,000.00.¹⁵

⁸ La. R.S. 18:1483(19).

⁹ See BOE-2, BOE-4.

¹⁰ *Id.*

¹¹ BOE-2, page 3. The Campaign Finance Disclosure Act, La. R.S. 18:1481, *et seq.*, also provides the same schedule of reports due. See La. R.S. 18:1495.4(B)(3) - (5).

¹² BOE-8. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he did not file a 10-G campaign finance disclosure report in connection with the October 12, 2019, primary election for the office of Mayor of the Town of Ball. BOE-9, page 4; BOE-10; BOE-12.

¹³ BOE-7.

¹⁴ BOE-8.

¹⁵ La. R.S. 18:1505.4(A)(4)(b) of CFDA provides that if, after conducting an adjudicatory hearing, the EAB determines that a candidate knowingly failed to file the required 10-G campaign finance disclosure report, or filed the 10-G report more than eleven days late, then the BOE, functioning as the Supervisory Committee on Campaign Finance Disclosure, may impose upon the candidate additional civil penalties not to exceed \$10,000.00 per report.

In hearings under the CFDA before the EAB, the BOE must prove by clear and convincing evidence that the candidate knowingly failed to file a required campaign finance disclosure report or filed it more than eleven days late.¹⁶ A rebuttable presumption of intent not to file reports exists when a candidate fails to submit any required report within three days after the final date for its filing.¹⁷

The office of Mayor of the Town of Ball is an “any other” level office.¹⁸ The BOE proved by clear and convincing evidence that Respondent failed to file his 10-G campaign finance disclosure report as a candidate for that office, which was due ten days prior to the November 16, 2019, general election. Every candidate for “any other” public office (or his campaign treasurer) is required to file reports of contributions and expenditures on specific days before and after an election, when the candidate makes expenditures in excess of two thousand five hundred dollars or receives a contribution in excess of two hundred dollars in the aggregate during the aggregating period. For the purposes of this provision, a contribution by a candidate for his own campaign for a public office other than a major office or district office shall not be considered in determining whether a candidate has received a contribution in excess of two hundred dollars in the aggregate.¹⁹ The Respondent’s 30-P report disclosed a third-party contribution of \$500.00 for the period from September 23, 2019, through October 27, 2019, which is a contribution in excess of \$200.00; therefore, Respondent was required to file a 10-G campaign finance disclosure report ten days prior to the general election, due on November 6, 2019.²⁰

¹⁶ See La. R.S. 42:1141.5(C). “‘Clear and convincing evidence’, in general, means that the fact of guilt must be proven to a greater degree than by ‘a mere preponderance of the evidence’ but less than by ‘beyond a reasonable doubt.’” *Louisiana State Bar Ass’n v. Edwins*, 329 So. 2d 437, 442 (La. 1976).

¹⁷ La. R.S. 18:1505.1(A).

¹⁸ La. R.S. 18:1483(7), (11), and (16); La. R.S. 18:1484(2).

¹⁹ La. R.S. 18:1484(2)(b).

²⁰ La. R.S. 18:1484(2) requires a candidate for any public office (other than a district or major office) that spends more than \$2,500.00 or receives a third-party contribution in excess of \$200.00, to file certain campaign finance disclosure reports, including the 10-G report.

Additionally, the EAB concludes that both the statute²¹ and the instructions provided in the Schedule prepared by the BOE, require that a candidate in the primary election must file a 10-G report, even where he does not participate in the general election, and said report “shall be the final report for the election.”²² Although Respondent did not participate in the November 16, 2019, general election, he was still required to file the 10-G report.

Any candidate for “any other” office who knowingly fails to timely file a required report may be assessed a civil penalty in the amount of \$40 per day, not to exceed \$1,000.00.²³ “Knowingly” means conduct which could have been avoided through the exercise of due diligence.²⁴

Respondent knew he was required to file certain campaign financial disclosure reports when he acknowledged he was subject to the CFDA upon qualification for candidacy. Respondent was provided with a Schedule of Reporting and Filing Dates for Candidates, which informed him that the 10-G report was due November 6, 2019. Respondent even timely filed his required 30-P report. On February 28, 2020, the BOE assessed a civil penalty of the maximum amount of \$1,000.00, as Respondent had failed to file his 10-G report by the due date, November 6, 2019. This assessment is not before the EAB. In the letter accompanying the Late Fee Assessment Order, the BOE notified Respondent that he could be subject to an additional civil penalty not to exceed \$10,000.00, pursuant to La. R.S. 18:1505.4(A)(4), for failing to file his 10-G report. The 10-G report had not been filed as of December 4, 2020. Therefore, the Respondent’s 10-G report is more than eleven days late.

By knowingly failing to file the required 10-G report, Respondent violated the CFDA, and

²¹ La. R.S. 18:1495.4.

²² La. R.S. 18:1495.4(B)(5).

²³ La. R.S. 18:1505.4(A)(2)(a)(iii).

²⁴ La. R.S. 18:1505.5(A).

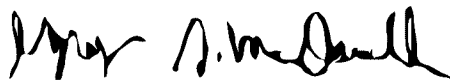
the BOE may assess an additional civil penalty against him not to exceed \$10,000.00 for the late report.²⁵

The BOE proved Respondent, a candidate for “any other” level office, failed to file his 10-G campaign finance disclosure report by November 6, 2019. As of December 4, 2020, he had not filed his 10-G report. Respondent is more than eleven days late in filing his 10-G campaign finance disclosure report. The BOE, in its capacity as the Supervisory Committee for Campaign Finance Disclosure, is authorized to impose against Respondent an additional civil penalty under authority of La. R.S. 18:1505.4(A)(4) (b), not to exceed \$10,000.00 for the late report.

ORDER

IT IS ORDERED that the 2019 10-G campaign finance disclosure report of Roger Z. Toney is more than eleven days late, and the Board of Ethics, in its capacity as the Supervisory Committee for Campaign Finance Disclosure, may impose upon Roger Z. Toney additional civil penalties as allowed by La. R.S. 18:1505.4(A)(4)(b).

Rendered and signed January 26, 2021, Baton Rouge, Louisiana.



Gregory McDonald
Presiding Administrative Law Judge



Anthony Russo
Administrative Law Judge

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Wednesday, January 27, 2021, I have sent a copy of this decision/order to all parties of this matter.

Clerk of Court
Division of Administrative Law



Esther Redmann
Administrative Law Judge

²⁵ La. R.S. 18:1505.4(A)(4)(b).

REVIEW RIGHTS

This decision exhausts your administrative remedies. If you are dissatisfied with this ruling, you may have the right to seek a rehearing or reconsideration of this decision or order, subject to the grounds for and time limitations provided in Louisiana Revised Statute 49:959 and Louisiana Code of Civil Procedure article 5059. To determine your review rights, you should act promptly and seek legal advice.

To request a rehearing or reconsideration, please send it to one of the addresses indicated below:

EMAIL documents to:
EABprocessing@adminlaw.state.la.us

FAX documents to:
EAB Section Deputy Clerk
(225) 219-9820

MAIL documents to:
DAL – EAB Section
ATTN: EAB Section Deputy Clerk
P. O. Box 44033
Baton Rouge, LA 70804-4033

If you do not request a rehearing of your decision or your rehearing request is denied, you have the right to seek judicial review in accordance with La. R.S. 49:964, La. R.S. 42:1142(A)(1), and La. C.C.P. art 5059. To determine your review rights, you should act promptly and seek legal advice.